

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 15343 of Joanna Tyler, pursuant to 11 DCMR 3108.1 and 3107.2, for a special exception under Section 2003 for a change of nonconforming use from rental and repair of T.V. equipment and sales to an architecture studio, or a special exception under Section 361 to allow an art gallery, or in the alternative, a use variance to allow retail and/or professional office uses (Sub-section 350.4) in an R-5-B District at premises 1727 21st Street, N.W., (Square 92, Lot 22).

HEARING DATE: October 10, 1990
DECISION DATE: November 7, 1990

FINDINGS OF FACT:

1. The property is located on the east side of 21st Street between R Street and Florida Avenue and is known as premises 1727 21st Street, N.W. It is zoned R-5-B.

2. The lot is irregularly shaped with a frontage of 20.27 feet along 21st Street and a depth of 44.74 feet on the north and 53.97 feet on the south. The site abuts a 12 foot wide public alley to the north and to the east.

3. The property is improved with a one-story masonry storefront building which occupies 100 percent of the lot and was constructed circa 1906 and initially used as grocery store. The building was occupied for commercial purposes until 1982. The last Certificate of Occupancy issued for the subject site was for a television rental and repair shop.

4. The property is separated from a C-3-B District to the north by a 12 foot wide public alley. The surrounding area is developed with a mixture of uses including single-family row dwellings, apartments, offices, restaurants, art galleries, and small retail uses.

5. The existing structure is a contributing building in the Dupont Circle Historic District and, therefore, cannot be demolished to allow for construction of a conforming building.

6. The applicant purchased the property with the intent of constructing a residential unit above the existing building and occupying the existing area as an architectural studio for her husband. The applicant's husband suffered a fatal illness prior to the issuance of permits for the intended renovation and use of the premises. The premises have been vacant since approximately 1982.

7. The applicant proposes to lease the space for use as an art gallery, architectural studio, or other retail and/or professional office uses. An art gallery is permitted in the R-5-B District with special exception approval from the Board pursuant to Section 361 of the Zoning Regulations. Because the property has been vacant since 1982, the previous nonconforming use is considered to be discontinued pursuant to Sub-section 2005.1 of the Zoning Regulations. Use of the property for an architectural studio, retail or professional office space would, therefore, require a variance from the use provisions of the Zoning Regulations.

8. In support of the request for a variance from the use provisions, the applicant testified as follows:

- a. The building was original constructed for commercial purposes and does not have interior separations or plumbing conducive to residential use.
- b. In order to divide the interior space of the building for residential use in compliance with the Building Code, additional windows would have to be cut out of the existing alley wall to meet egress requirements. Because the structure is considered as a contributing building in the Dupont Circle Historic District, it is unlikely that the Historic Preservation Review Board would approve the addition of windows required for residential use.
- c. The building occupies 100 percent of the lot, therefore, no yard space can be provided on the site.
- d. The basement of the structure does not have adequate ceiling clearance for residential use. In addition, there are no windows or window wells to the basement area. Because the building immediately abuts public alleys, the installation of windows wells is not possible.

9. With respect to the requested special exception, the applicant testified as follows:

- a. The property is separated by an alley from a C-3-B zone, surrounded by a wide mix of land uses including an association headquarters, a nightclub, several restaurants and low-rise commercial structures, a mix of single-family rowhouses and several multi-family buildings and a six-story office and retail building. Since this property has always been used as a commercial site and given the wide mix of commercial and residential uses

already existing in the area, the use of the property as an art gallery would not cause any harm to existing property owners. In fact, the proposed use would serve as a buffer for the remainder of the block. The alley is used for commercial purposes and the proposed use would be quiet at night, thereby buffering the noise and activity generated by the rear entrance of the night club and the commercial uses to the north of the property immediately adjacent to the property.

- b. No on-site parking is required or proposed to be provided for the proposed art gallery. Visitors are expected to arrive by public transportation or to walk to the site. Commercial parking is available nearby for visitors who arrive at the site by automobile.
- c. The site is well-served by public transportation and is located within walking distance of the Dupont Circle Metrorail Station. There is adequate on-street parking in the area, as well as off-street and garage parking in the nearby commercial areas.
- d. The proposed use is consistent with existing development in the area and is more in keeping with area development than the previous commercial uses of the site.

10. The Office of Planning (OP), by memorandum dated October 3, 1990, recommended conditional approval of the application. The OP was of the opinion that the proposal would not adversely impact the surrounding area nor impair the intent, purpose and integrity of the zone plan for the city. The OP recommended that the applicant install a three foot high wrought iron fence around the perimeter of the front yard with gates along the 21st Street frontage only. The OP further recommended that at least 50 percent of the paved area of the front yard be removed and replaced with plantings.

11. By letter dated October 3, 1990, ANC 2B opposed the granting of the application. The ANC did not address specific issues and concerns relative to the application but noted its receipt of several letters from residents opposed to the conversion of residential property to commercial use. The ANC noted that some residents were willing to accept the use of the site as an art gallery.

12. The record contains four letters in support of the application. Two nearby property owners testified at the public

hearing in support of the application. The support was generally based on the commercial nature of the existing structure and the compatibility of the proposed use with existing development in the immediate area.

13. The Dupont Circle Citizens Association (DCCA), by letter dated October 10, 1990 and by representative at the public hearing opposed the granting of the application. The opposition is generally summarized as follows:

- a. The peaceful residential character of the block should be preserved. Further inroads into residential districts should be prevented.
- b. The property has not been occupied commercially for some time.
- c. The applicant has not demonstrated any significant hardship entailed in using the property in a manner consistent with the R-5-B zone district.

14. A representative of the Residential Action Coalition and two nearby property owners testified in opposition to the application. In addition to the issues raised by the DCCA, the opposition, also expressed concerns related to increased problems with parking in the public alley; garbage storage and collection problems; increased property values; and noise generated by general commercial uses. The opposition pointed out that the concerns expressed were related to general commercial uses and that the use of the site as an art gallery would not be objectionable. The record also contains a petition in opposition to the application.

15. At the conclusion of the public hearing, the Board left the record open for the applicant to receive an executed lease for use of the site for art gallery purposes. A copy of an executed lease between the applicant and the David Abramson Gallery was submitted on October 24, 1990.

16. In addressing the issues and concerns expressed by the opposition, the Board concurs with the opinion that the applicant has not met the onerous burden of proof necessary to justify the granting of a use variance. With respect to the special exception for art gallery use, the Board finds that the applicant has submitted evidence of substantial compliance with the criteria set forth in Section 361. The Board notes the lack of vigorous objection to the use of the site for art gallery purposes and the operating characteristics of the proposed use as contained in the lease marked as Exhibit No. 37A of the record.

CONCLUSIONS OF LAW AND OPINION:

Based on the foregoing findings of fact and the evidence of record, the Board concludes that the applicant is seeking a special exception or variance relief. The granting of the special exception requires that the applicant demonstrate compliance with the provisions of 11 DCMR 316 and 3108.1. The Board concludes that the applicant has met the burden of proof. The proposed art gallery, as hereinafter conditioned, is located and shall be operated so as not to become objectionable because of noise, pedestrian or vehicular traffic, hours of operation or other objectionable conditions. No on-site parking is required. The site is well served by public transportation. The proposed use is more in keeping with the R-5-B District than the previous commercial uses and is not likely to adversely affect the present character and future development of the surrounding area.

As to the variance relief requested, the Board concludes that the applicant is seeking a use variance, the granting of which requires the applicant to demonstrate through substantial evidence that the property is affected by an exceptional or extraordinary condition, inherent in the property itself, which would create an undue hardship upon the owner in making reasonable use of the property in accordance with the zoning district in which it is located. The Board concludes that the applicant has not met the requisite burden of proof necessary to justify the granting of a use variance. Even though the property is commercial in nature and pre-dates the Zoning Regulations as adopted in 1958, the applicant has not demonstrated undue hardship as evidenced by the fact that the property can reasonably be used as an art gallery which is permitted as a special exception in the R-5-B District. Accordingly, the request for a use variance is hereby **DENIED**.

The Board concludes that it has afforded the ANC the "great weight" to which it is entitled. The Board further concludes that the special exception relief can be granted as in harmony with the general purpose and intent of the Zoning Regulations and Map and will not tend to affect adversely the use of neighboring property in accordance with said Regulations and Map. It is therefore **ORDERED** that the application for special exception is **GRANTED**, **SUBJECT** to the following **CONDITIONS**:

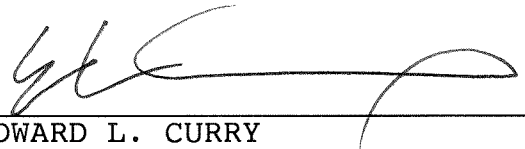
1. Approval shall be for a period of TEN YEARS.
2. The number of employees shall not exceed three.
3. The hours of operation shall not exceed from 9:00 A.M. to 9:00 P.M., Tuesday through Saturday.

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VOTE: 4-0 (Charles R. Norris, Carrie L. Thornhill and Paula L. Jewell to grant; Lloyd D. Smith to grant by proxy; Sheri M. Pruitt not voting, not having participated in the case).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:


EDWARD L. CURRY
Executive Director

FINAL DATE OF ORDER: MAY 13 1991

PURSUANT TO D.C. CODE SEC. 1-2531 (1987), SECTION 267 OF D.C. LAW 2-38, THE HUMAN RIGHT ACT OF 1977, THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF D.C. LAW 2-38, AS AMENDED, CODIFIED AS D.C. CODE, TITLE 1, CHAPTER 25 (1987), AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. THE FAILURE OR REFUSAL OF APPLICANT TO COMPLY WITH ANY PROVISIONS OF D.C. LAW 2-38, AS AMENDED, SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.

UNDER 11 DCMR 3103.1, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

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GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



APPLICATION/APPEAL NO. 15343

As Executive Director of the Board of Zoning Adjustment Adjustment, I hereby certify and attest to the fact that a copy of the Order in this application/appeal dated MAY 13 1991 has been mailed postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

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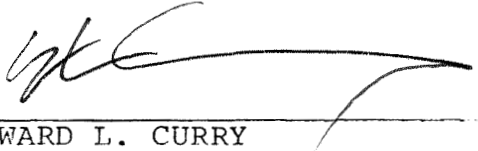
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EDWARD L. CURRY
Executive Director

DATE: MAY 13 1991